

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Southern Star Central Gas Pipeline, Inc.

Docket No. RP02-241-003

ORDER ON REHEARING

(Issued December 24, 2003)

1. On April 15, 2003, the Commission issued an order in this proceeding accepting an amended refund report filed by Southern Star Central Gas Pipeline, Inc. (Southern Star), formerly Williams Gas Pipelines Central, Inc., amended refund report.¹ The report reflects the final activity on the disposition of all penalty revenues collected for Periods of Daily Balancing (PODBs) and Operational Flow Orders (OFOs) issued prior to September 30, 2001. The Missouri Public Service Commission (MoPSC) has requested rehearing of the April 15, 2003 Order. For the reasons discussed below, the Commission denies the request for rehearing.

Background

2. PODBs are imposed by Southern Star pursuant to Section 9.4 of its General Terms and Conditions (GT&C) during periods of severe weather and concomitant high demand for gas in Southern Star's major market areas. As provided in Section 9.6, penalties are imposed for each of the following occurrences during a PODB: overruns of Maximum Daily Transportation Quantity (MDTQ) and Maximum Daily Withdrawal Quantity (MDWQ); depletion of gas in storage; under-receipts at receipt points; and over-deliveries at delivery points. Section 9.6 also provides for penalty revenues to be credited to non-offending parties.

¹ 103 FERC ¶ 61,067 (2003).

3. Southern Star imposed PODBs for the periods January 19 and 20, 1996, and January 31 through February 4, 1996. The Commission previously accepted a refund report associated with these two PODBs for penalty collections through November 30, 1996.² The next three PODBs occurred on December 18 and 19, 1996, January 9 through 13, 1997, and January 17, 1997.³ The subject refund report, as corrected, reflects additional collections of \$445,475 for the two PODBs imposed during the 1995-1996 winter heating season, plus interest calculated through April 30, 2002, and \$423,577 for the three PODBs imposed during the 1996-1997 winter heating season, plus interest calculated through April 30, 2002.

4. MoPSC protested Southern Star's amended refund report. MoPSC asserted that Southern Star failed to collect the full interest charges due from certain offending shippers who were late in paying the principal amount of their penalties, resulting in non-offending shippers receiving less of a penalty refund than they are entitled to receive. MoPSC stated that revised Schedule 2 shows that of the 56 shippers who were late in paying their penalties, only eight paid interest on their assessed penalties, resulting in understated interest of \$35,409. MoPSC contended Southern Star should be directed to pay the uncollected interest, along with the additional interest accrued on the unpaid amounts through the date of refund. MoPSC alleged that there may be penalties assessed, but remain unpaid. Southern Star filed an answer to MoPSC's protest. Southern Star stated that there are no remaining penalty obligations to be collected and it should not be required to pay interest that it did not collect. Southern Star stated that even though it billed interest to all parties for late payment of all penalties and it made reasonable efforts to collect, it was unable to collect such interest. It explained that the parties owing interest are small point operators and shippers serving small towns and the penalties created a financial hardship on these parties which made it difficult to collect the interest.

5. On April 15, 2003, the Commission issued an order accepting the refund report, as corrected. The Commission found that Southern Star had sufficiently addressed MoPSC's concerns regarding Southern Star's collection efforts and that it was inappropriate to order Southern Star to expend additional resources to recover any

²See 79 FERC & 61,216 (1997).

³By order issued July 3, 2002, in Southern Star's Order No. 637 compliance filing proceeding, the Commission approved Southern Star's proposal to change the procedures for reporting penalty activity in PODBs and OFOs. 100 FERC & 61,034 at p.81 and p.87 (2002). On November 26, 2002, Southern Star filed its refund report for the twelve-month period ending September 20, 2002. Southern Star reported no issuance of a PODB or an OFO for that period, and thus no penalties were assessed or collected and no refund plan was necessary. The Commission accepted the report in an unpublished letter order dated February 26, 2003 in Docket No. RP03-117-000.

additional penalties.⁴ The order directed Southern Star to make the specified customer refunds with appropriate interest and to include in the refund the excess interest it collected from certain shippers to those shippers. MoPSC then sought rehearing of the April 15, 2003 order.

6. Subsequently, on May 22, 2003, Southern Star filed a refund report in compliance with the April 15, 2003 order. No adverse comments or protests were filed in response to the compliance filing. On August 14, 2003, a Director's letter order accepted the refund report in Docket No. RP02-241-004.

Discussion

Rehearing Request

7. In its request for rehearing, MoPSC requests that the Commission find Southern Star's efforts at collection were insufficient and unreasonable and require Southern Star to pay and distribute the amounts it never collected along with accrued interest, to the appropriate non-offending shippers. MoPSC argues that the circumstances in Colorado Intersate and Stowers differ from the circumstances in this case, "because of the length of time between the date of the infraction to the date of attempted collection, the pipeline and/or Commission were trying to collect from natural gas producers who were deceased, bankrupt, merged out of existence, or could not be located." MoPSC states that in this case Southern Star has explained that the shippers are small point operators and small shippers who serve small towns on its system. MoPSC contends that it is highly likely that these entities are still Southern Star's customers. MoPSC asserts that further collection efforts are not futile and Southern Star has not adequately explained how all its remedies have been exhausted or further efforts were unduly burdensome.

8. Additionally, MoPSC contends that the Commission has effectively granted an inappropriate waiver of Southern Star's tariff. MoPSC argues that the waiver is inappropriate because it was never requested, it is discriminatory, and it discourages proper pipeline and shipper behavior. MoPSC asserts that the only step Southern Star stated that it took to collect the penalty revenues was to bill the point operators. MoPSC argues that all the facts and equities should be weighed before a waiver is granted.

Commission Ruling

9. The Commission has again weighed the facts and equities in this proceeding, and denies MoPSC's request for rehearing. We affirm the earlier finding that it is

⁴ Citing, Colorado Interstate Gas Company (Colorado Interstate), et al., 102 FERC ¶ 61,016 (2003) and Stowers Oil & Gas Company (Stowers), et al., 71, FERC ¶ 61,383 (1995).

inappropriate to order Southern Star to expend additional resources to recover any additional interest accrued on penalties owed. In its answer to MoPSC's protest, Southern Star stated that it collected all the principal amounts of the assessed penalties. Southern Star also stated that it pursued the collection of the assessed penalties for several years. MoPSC does not dispute the fact that the remaining interest amounts are de minimis or that Southern Star would incur costs in continued attempts to recover the remaining interest. Since the amounts are de minimis, it is unlikely that any refunds recovered would be commensurate with the efforts necessary to pursue the refunds.

10. The Commission did not grant an inappropriate waiver of Southern Star's tariff. Southern Star did not just decide to ignore its tariff provisions, but pursued recovery of the penalties for several years and filed an earlier refund report. The Commission finds that Southern Star's efforts to collect the remaining interest amounts have been appropriate. Furthermore, MoPSC has not shown that Southern Star's decision to stop pursuing collection of the remaining interest from specific customers was made in a discriminatory manner. Southern Star explained that collection of the interest would be a hardship on the small point operators and small towns, since they had difficulty in paying the principal amount of the assessed penalties. MoPSC does not dispute this statement. In these circumstances, collection of the penalties, excluding interest, is sufficient. The harm to small point operators and small towns and additional efforts required of Southern Star in collecting the remaining interest amounts outweighs the benefits of any additional deterrent affect, and does not amount to undue discrimination. Southern Star should not be required to pay interest amounts it did not collect, especially since the uncollected interest amounts are de minimis and non-offending shippers are not harmed in any substantive way. Moreover, Southern Star explained that under Section 9.6(c) of its GT&C it may keep the highest level of penalties related to a shipper's MDTQ or MDWQ daily overruns during a penalty period. Non-offending shippers benefit from Southern Star's proposal not to retain these penalty amounts.

11. Finally, the Commission's reliance on Colorado Interstate and Stowers is not misplaced just because the periods between the infraction and the attempted collections were longer in those cases. Those cases involved more complicated legal issues. In some cases it was not immediately apparent that any infraction had occurred. In this case, Southern Star's collection efforts started prior to February 18, 1997. The date Southern Star filed its first refund report regarding penalties collected for the PODBs that occurred in January and February 1996, nearly seven years ago.⁵ Furthermore, not all of the producers in the cited cases were deceased, bankrupt, merged out of existence, or could not be located. In Colorado Interstate, for example, only 15 percent of the outstanding refund obligations were attributable to first sellers that were dissolved, in bankruptcy, deceased, and/or could not be located. Rehearing is denied.

⁵ See 79 FERC ¶ 61,216 (1997).

The Commission orders:

MoPSC's request for rehearing is denied for the reasons discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.